

REMARKS/ARGUMENTS

A Request for Continued Examination (RCE) is submitted herewith.

The present Amendment is in response to the Final Office Action mailed September 25, 2007. Claims 1-8 and 13-24 were rejected in the Action. Claims 1 and 17 have been amended herein and claims 9-12 have been previously canceled. Therefore, claims 1-8 and 13-24 remain pending in the present application. Support for all claim amendments can be found in Applicants' originally filed disclosure in at least paragraphs [0145]-[0146]. As such, no new matter has been added. Applicants set forth remarks relating to the Office Action below.

In the present Action, the Examiner rejected claims 1-6 under 35 U.S.C. § 102(e) as begin anticipated by U.S. Patent Pub. No. 2003/233145 to Landry et al. ("*Landry*"). The Examiner asserted that FIG. 1 of *Landry* shows an artificial intervertebral disc including first baseplate 12', second baseplate 12'' and a coupling 14 disposed between the baseplates that permits articulation. Referring to FIGS. 1 and 2 of *Landry*, Applicants note that each implant 10 includes a pair of connectors 14 that extend from opposing lateral sides of the implant, with a large central opening being disposed between the connectors 14 and the first and second baseplates 12', 12''. The insertion tools shown in *Landry* are inserted into a central opening and between the connectors 14. In the present Action, the Examiner asserted that he is interpreting "central coupling" in the claims as between the baseplates.

In contrast, the "central coupling" disclosed in the present application is an entirely different structure than *Landry's* two lateral connectors 14 that connect the sides of the two baseplates. Referring to FIG. 1A and FIG. 1H of the present

application, an artificial intervertebral disc according to the present invention includes a central coupling 106 (FIG. 1A) that connects the two plates together at a central portion of each baseplate.

Applicants respectfully assert that amended independent claim 1 is unanticipated by *Landry* because the reference neither discloses nor suggests an apparatus including an artificial intervertebral disc "wherein the disc comprises at least two baseplates coupled to one another by a central coupling between the baseplates." Amended claim 1 is also unanticipated because *Landry* neither discloses nor suggests an apparatus "wherein the central coupling is located between the at least two tines" when the tines are inserted between the baseplates. Clearly, *Landry* does not teach an intervertebral disc having a "central coupling" nor does it teach that the central coupling is located between at least two tines when the tines are inserted between baseplates as required by amended independent claim 1. For the foregoing reasons, independent claim 1 is unanticipated by *Landry* and is otherwise allowable. Claims 2-6 are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

The Examiner also rejected claims 7 and 8 under 35 U.S.C. §103(a) as being unpatentable over *Landry*. In response, Applicants assert that claims 7 and 8 are patentable over *Landry*, *inter alia*, by virtue of their dependence from claim 1, which is patentable for the reasons set forth above.

Further in the Action, the Examiner rejected claims 1, 4, 13, 16-21, and 24 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,113,637 to Gill et al. ("Gill") in view of U.S. Pat. No. 6,752,832 to Nuemann ("Nuemann"). The Examiner asserted that while FIGS. 16 and 17 of *Gill* show an insertion tool with a shaft 74 and a tine 79 at

the distal end that is inserted between the baseplates, *Gill* fails to disclose the tool can have two tines parallel to one another for straddling the coupling. The Examiner asserted that because *Nuemann* teaches a movable two piece spinal implant that is inserted with a tool having tines 28 that are parallel to one another and straddles the central coupling that it would have been obvious for one of ordinary skill in the art to modify the tool of *Gill* and include two tines as taught by *Nuemann* to provide more control and grip of the implant for insertion purposes.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. M.P.E.P. § 2142. To establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to modify the references or to combine reference teachings. Second, there must be reasonable expectation of success. Finally, the prior art must teach all the claim limitations. *Id.* In light of the following arguments, Applicants respectfully point to the first prong of the test which states that there must be some suggestion or motivation to modify the references or to combine reference teachings.

Applicants respectfully assert that there is no suggestion or motivation in *Nuemann* to modify the tool of *Gill* to arrive at the present invention. In fact, *Nuemann* teaches away from inserting tines of an insertion tool between articulating baseplates to force the baseplates from a substantially non-parallel into a substantially parallel orientation relative to one another as recited in claims 1 and 17. Applicants would like to point the Examiner to col.3, 11.33-35 of *Nuemann* which states, "As seen in Figs. 1 through 8, a spinal implant 1 basically comprises an outer sleeve part 2, an inner core part 3, and a nut 3, all centered on a common axis A. (emphasis added). There is no teaching or suggestion

anywhere in the specification that the spinal implant in *Nuemann* includes articulating baseplates as recited in claims 1 and 17. The only movement of assembled parts in *Nuemann* is coaxial movement. More to this point, *Nuemann* discloses that the implant is *fitted* to the forks 28 and 29 of the holder 26 (insertion tool) to only hold the implant and not to alter the angular orientation of component parts in any way. The "central coupling" in *Nuemann* is not located between the tines of the insertion tool to alter the orientation angle of component parts of the implant disclosed therein. Therefore, one of ordinary skill in the art would not look to *Nuemann* to modify the tool of *Gill* to have two tines parallel to one another for straddling the coupling.

For the foregoing reasons, independent claims 1 and 17 are not obvious over *Gill* in view of *Nuemann* and are allowable. Claims 2-8, 13-16, and 18-24 are not obvious, *inter alia*, by virtue of their dependence from claims 1 and 17, which are not obvious for the reasons set forth above.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' agent at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 31, 2007

Respectfully submitted,

By 

William A. Di Bianca

Registration No.: 58,653
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Agent for Applicants